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IN THE

Supreme Court of the United States

October Term, 1960.

No. 513

ELEANOR ZIRIN, *Petitioner*,

v.

E. A. McGINNES, District Director of Internal Revenue,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Henry L. Schimpf. Jr., Esq., on behalf of the Petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above matter on August 1, 1960.

OPINIONS BELOW.

No opinions filed in this cause have been reported as of the date of printing this Petition.

JURISDICTION.

The judgment of the United States Court of Appeals for the Third Circuit was made and entered on August 1, 1960. and a copy thereof is appended to this Petition in the Appendix at page 57. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

Petitioner was an employee of the Philadelphia office of the Internal Revenue Service, holding a Civil Service classification of GS-5. She was dismissed from her employment by the District Director on December 9, 1955, which dismissal was subsequently sustained by the Civil Service Commission. Petitioner sought injunctive relief against said dismissal, alleging that the District Director had no authority to dismiss, such power not having been delegated to him by the Secretary of the Treasury. The District Court granted a motion for summary judgment in favor of the District Director which judgment was reversed upon appeal by the United States Court of Appeals for the Third Circuit. Subsequently, on the District Director's petition for rehearing, the Appeal was reargued in order to enable the Circuit Court to hear and consider certain additional

matters not therefore offered by the District Director, and, after hearing, the Circuit Court reversed its earlier decision and affirmed the judgment entered by the District Court. The questions presented are:

1. Under the statutes and regulations, did the District Director of Internal Revenue have the requisite delegated authority from the Secretary of Treasury to separate or dismiss Petitioner from her civil service position within the Internal Revenue Service?

2. May the Circuit Court of Appeals, upon a rehearing, consider and base its decision upon items of evidentiary value which had not been presented or offered either to the District Court or the Circuit Court of Appeals at the time of original hearing?

STATUTES, FEDERAL RULES AND REGULATIONS INVOLVED.

The pertinent portions of such statutes as are herein involved are set forth in the text.

The regulations involved, viz.: Reorganization Plan No. 26 of 1950; Extracts, Internal Revenue Manual, August 17th, 1954; RC-PHI-Memorandum No. 18-2, revised July 12th, 1955; Treasury Department Order No. 72; Treasury Department Order No. 120; Personnel Circular No. 109 (Revised); Treasury Department Order No. 150-27; Personnel Circular No. 109 (Revised), Supplement 5; Personnel Circular No. 109, Second Revision; are set forth in the Appendix (pp. 19-37).

STATEMENT.

The Petitioner was appointed to the position of clerk-typist on February 26, 1942 in the Department of Internal Revenue at Philadelphia, Pennsylvania at a salary of One thousand two hundred sixty dollars ($1,260.00) per annum. She was discharged from her employment in the Internal Revenue Service on December 9th, 1955 in a letter dated November 30, 1955 from E. A. McGinnes, District Director of Internal Revenue Service at Philadelphia, Pennsylvania. At the time of her discharge, she was classified as GS-5, Income Window Teller at a salary of Four thousand four hundred eighty dollars ($4,480.00) per annum.

The Petitioner received from the time of her appointment up to and including June 30, 1955 satisfactory or better performance ratings. On July 5, 1955, she received an unsigned letter from her immediate supervisor indicating that her services were unsatisfactory and unless her services were improved within ninety (90) days, she would be given a rating of unsatisfactory which could result in disciplinary action.

On November 2, 1955, the Petitioner received a letter from William F. Culliney, acting District Director of Internal Revenue Service at Philadelphia, Pennsylvania, indicating that she would be separated from the Service in not less than thirty (30) days for inefficiency. About November 8, 1955, she delivered to said E. A. McGinnes, District Director, her answer to said letter and the charges set forth therein.

On November 30, 1955, the Petitioner received a letter from E. A. McGinnes notifying her that she would be separated from the Service on December 9, 1955 and that she had a right to appeal within ten (10) days from receipt of the letter to the Regional Commissioner of Internal Revenue, Philadelphia, Pennsylvania.

On December 5, 1955, the Petitioner filed her appeal to the Performance Rating Board of Review which after hearings held on April 12 and 13 of 1956, sustained on April 13, 1956, the unsatisfactory rating of Petitioner. She appealed to the Regional Commissioner of Internal Revenue Service. On June 20, 1956, the Regional Commissioner of Internal Revenue Service denied her appeal. On June 28, 1956, the Petitioner further appealed to the Commissioner of Internal Revenue at Washington, D. C., requesting that the action of E. A. McGinnes, District Director, be reversed and on September 6, 1956, the Commissioner of Internal Revenue sustained the action of the District Director.

On October 29, 1956, the Petitioner filed her complaint in District Court of United States for the Eastern District of Pennsylvania against E. A. McGinnes, District Director of Internal Revenue and Stanley A. Niles, Chairman, Ira Herschberg and Joseph S. Bryan, members of the Performance Rating Board of Review of United States Internal Revenue Service for the 3rd Civil Service Region.

On December 19, 1956, the defendants in said suit filed a motion to dismiss the complaint. The District Court denied, on March 12, 1957, the motion to dismiss as to E. A. McGinnes, District Director of Internal Revenue, and granted the motion as to the defendants, Stanley A. Niles, Chairman, Ira Herschberg and Joseph S. Bryan, members of the Performance Rating Board of Review.

On March 11, 1957, Petitioner's motion for leave to amend Complaint was granted and an Amended Complaint was filed on April 30, 1957 in which she especially sought to have the Court order the District Director to reinstate her as a permanent civil service employee in the classification she had at the time of her separation.

On July 22, 1957, the Director of Internal Revenue filed a motion for summary judgment which was stayed pending an appeal by the Petitioner to the United States Civil Service Commission at Washington, D. C. and the Board of Appeals and Review, United States Civil Service Commission, Washington, D. C. which appeals were denied.